

Message Text

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PAGE 01 BERLIN 00944 061936Z

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C O N F I D E N T I A L BERLIN 0944

E.O. 11652: GDS

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SUBJECT: KAMMERGERICHT SUSTAINS BRUECKMANN EXTRADITION ORDER

REF: A) BONN 8851; B) STATE 115610

1. SUMMARY: KAMMERGERICHT JUNE 6 DELIVERED BRIEF DECISION REJECTING APPLICATIONS OF BOTH SENAT AND BRUECKMANN THAT COURT RECONSIDER ITS PRIOR DECISION THAT GIRL SHOULD BE RETURNED TO GDR TO FACE TRIAL FOR MANSLAUGHTER. APPARENT RESULT OF SURPRISING ACTION IS THAT BRUECKMANN WILL STAY IN JAIL IN WEST BERLIN UNTIL STRASBOURG PROCEEDINGS ARE COMPLETED, AND EXTRADITION ORDER WILL REMAIN OUTSTANDING. END SUMMARY.

2. KAMMERGERICHT JUNE 6 REJECTED PUBLIC PROSECUTOR'S APPLICATION FOR REHEARING ON SOMEWHAT TECHNICAL GROUND THAT INNER-GERMAN LEGAL ASSISTANCE LAW, UNDER WHICH GIRL IS TO BE RETURNED TO GDR, PROVIDES FOR RECONSIDERATION OF PRIOR DECISION ONLY WHEN NEW FACT ("TATSACHE") APPEARS WHICH RELATES TO APPROPRIATENESS OF EXTRADITION ITSELF. COURT ARGUED THAT DECISION OF STRASBOURG HUMAN RIGHTS COMMISSION TO CONSIDER WHETHER BRUECKMANN'S EXTRADITION WOULD VIOLATE EUROPEAN HUMAN RIGHTS CONVENTION--WHICH WAS PROSECUTOR'S GROUNDS FOR ASKING KAMMERGERICHT TO REVERSE EARLIER DECISION--RELATED ONLY TO
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PAGE 02 BERLIN 00944 061936Z

APPROPRIATENESS OF DELAYING FINAL EXECUTION OF KAMMER-

GERICHT'S PRIOR DECISION.

3. KAMMERGERICHT REJECTED AT SAME TIME BRUECKMANN'S CONTENTION THAT FEDERAL CONSTITUTIONAL COURT'S DECISION SHOULD BE REGARDED AS NEW FACT JUSTIFYING REHEARING. WHILE NOTING PARENTHETICALLY THAT KARLSRUHE HAD REJECTED HER CONSTITUTIONAL COMPLAINT, KAMMERGERICHT SAID THAT, BECAUSE OF EXPRESS PROHIBITION FROM BRITISH COMMANDANT ACTING PURSUANT TO AK LAW 7, DECISION OF KARLSRUHE COURT WHICH LACKS COMPETENCE FOR BERLIN COULD IN NO WAY BE TAKEN INTO CONSIDERATION.

4. FINALLY, KAMMERGERICHT REJECTED BRUECKMANN'S APPLICATION THAT SHE BE RELEASED FROM CONFINEMENT BECAUSE OF UNSTABLE MENTAL CONDITION. COURT NOTED THAT SENAT HAD OFFERED TO HAVE HER EXAMINED BY PRISON DOCTOR BUT SHE HAD REFUSED WITHOUT GIVING REASON. IN THESE CIRCUMSTANCES, COURT SAID, THERE WAS NOT EVEN BASIS FOR ORDERING EXAMINATION BY OUTSIDE DOCTORS.

5. IN BRIEF COMMENTS TO PRESS, SENATOR FOR JUSTICE KORBER SAID KAMMERGERICHT DECISION LEFT BRUECKMANN CASE IN "A CERTAIN DILEMMA," AND EMPHASIZED THAT INNER-GERMAN LEGAL ASSISTANCE LAW WAS NOT FULLY APPROPRIATE FOR ALL PRESENT SITUATIONS AND THEREFORE REQUIRED AMENDEMENTS. HE SAID THAT HE INTENDED TO SUBMIT SEVERAL SPECIFIC PROPOSALS FOR CHANGES IN LAW THIS WEEK TO FRG JUSTICE MINISTER VOGEL. SPD FRAKTION LEADER DR. WOLFGANG HAUS NOTED THAT DECISION OF INDEPENDENT COURT MUST BE RESPECTED, BUT AGREED WITH KORBER THAT DECISION SUGGESTED LAW IN PRESENT FORM MAY NOT FULLY MEET NEEDS OF "DIVIDED GERMANY." FDP FRAKTION CHAIRMAN OXFORD TOLD PRESS THERE WERE NO GROUNDS FOR REBUKING COURT, BUT BERLIN FDP WAS SYMPATHETIC TO PLIGHT OF 18-YEAR OLD GIRL AND HOPED THAT DECISION IN STRASBOURG WOULD MARK UPWARD TURN IN HER FORTUNE.

6. COMMENT: KAMMERGERICHT DECISION CAME AS SURPRISE AND APPEARS TO BLOCK SCENARIO WHICH SENAT DEVISED TO TERMINATE CASE. THERE WOULD NOW APPEAR TO BE NO BASIS FOR SENAT TO REQUEST THAT BRUECKMANN BE TRIED IN WEST BERLIN. SINCE WE HAVE ALREADY BEEN TOLD THAT THERE IS GOOD CHANCE STRASBOURG PROCESS WILL LAST AT LEAST A YEAR, IT WOULD SEEM THERE WILL BE PLENTY

CONFIDENTIAL

PAGE 03 BERLIN 00944 061936Z

OF TIME FOR SENAT TO CONSIDER WHAT MUST ULTIMATELY BE DONE WITH GIRL. KAMMERGERICHT DECISION, MAKING CLEAR THAT ULTIMATE QUESTION OF WHETHER OR NOT GIRL RETURNS TO GDR IS NOT SETTLED, SHOULD TEND TO DEFUSE ANY STRONG GDR OR SOVIET REACTION. AT SAME TIME IT PROVIDES FURTHER DEMONSTRATION THAT ALLIES HAVE FULFILLED THEIR RESPONSIBILITIES WITH RESPECT TO KARLSRUHE COURT'S LACK OF COMPETENCE IN BERLIN MATTERS AND SHOULD BE OF USE IN CONTINGENCY TALKING POINTS FOR ALLIED RESPONSE

TO ANY SOVIET OR GDR PROTEST.BORG

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